

EXHIBIT 35

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MERLE D. LEWIS,

Defendant.

Civil Action Number:

FINAL JUDGMENT AS
TO DEFENDANT
MERLE D. LEWIS

The Securities and Exchange Commission having filed a Complaint and Defendant Merle D. Lewis ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or

otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)], by using any means or instruments of transportation or communication in interstate commerce or by using the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud, or
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 13b2-2 under the Exchange Act [17 C.F.R. § 240.13b2-2] by directly or indirectly making or causing to be made materially false or misleading statements, or omitting to state or causing other persons to omit to state material facts necessary in order to make statements made, in light of the circumstances under which such statements are made, not misleading to an accountant in connection with:

(1) an audit or examination of the financial statements of an issuer required to be made pursuant to the Exchange Act; or (2) the preparation or filing of any document or report required to be filed with the Commission pursuant to the Exchange Act or otherwise.

IV.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section

13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 promulgated thereunder [17 C.F.R. § 240.13b2-1] by:

- (a) falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act; or
- (b) knowingly circumventing or knowingly failing to implement a system of internal accounting controls.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13], by knowingly providing substantial assistance to an issuer that:

- (a) fails to file with the Commission any report or statement required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, or information and documents required by the Commission to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act;

- (b) fails, in addition to the information expressly required to be included in a statement or report, to add such further material information as is necessary to make the required statements, in the light of the circumstances under which they were made not misleading;
- (c) fails to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the issuer; and
- (d) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: transactions are executed in accordance with management's general or specific authorization; transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets; access to assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$150,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall make this payment within ten (10) business days after entry of this Final Judgment by certified

check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Merle D. Lewis as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited for five years following the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

X.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: _____, _____

UNITED STATES DISTRICT JUDGE

EXHIBIT 36

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

RICHARD R. HYLLAND,

Defendant.

Civil Action Number:

FINAL JUDGMENT AS
TO DEFENDANT
RICHARD R. HYLLAND

The Securities and Exchange Commission having filed a Complaint and Defendant Richard R. Hylland ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or

otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], by using any means or instruments of transportation or communication in interstate commerce or by using the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud, or
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

III.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 promulgated thereunder [17 C.F.R. § 240.13b2-1] by:

- (a) falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act; or
- (b) knowingly circumventing or knowingly failing to implement a system of internal accounting controls.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a),

78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13], by knowingly providing substantial assistance to an issuer that:

- (a) fails to file with the Commission any report or statement required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, or information and documents required by the Commission to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act;
- (b) fails, in addition to the information expressly required to be included in a statement or report, to add such further material information as is necessary to make the required statements, in the light of the circumstances under which they were made not misleading;
- (c) fails to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the issuer; and
- (d) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: transactions are executed in accordance with management's general or specific authorization; transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets; access to

assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$150,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall make this payment within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Richard R. Hylland as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited for five years following the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15

U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

IX.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: _____, _____

UNITED STATES DISTRICT JUDGE

EXHIBIT 37

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

KURT D. WHITESEL,

Defendant.

Civil Action Number:

**FINAL JUDGMENT AS
TO DEFENDANT
KURT D. WHITESEL**

The Securities and Exchange Commission having filed a Complaint and Defendant Kurt D. Whitesel ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or

otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)], by using any means or instruments of transportation or communication in interstate commerce or by using the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud, or
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 13b2-2 under the Exchange Act [17 C.F.R. § 240.13b2-2] by directly or indirectly making or causing to be made materially false or misleading statements, or omitting to state or causing other persons to omit to state material facts necessary in order to make statements made, in light of the circumstances under which such statements are made, not misleading to an accountant in connection with:

(1) an audit or examination of the financial statements of an issuer required to be made pursuant to the Exchange Act; or (2) the preparation or filing of any document or report required to be filed with the Commission pursuant to the Exchange Act or otherwise.

IV.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section

13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 promulgated thereunder [17 C.F.R. § 240.13b2-1] by:

- (a) falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act; or
- (b) knowingly circumventing or knowingly failing to implement a system of internal accounting controls.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13], by knowingly providing substantial assistance to an issuer that:

- (a) fails to file with the Commission any report or statement required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, or information and documents required by the Commission to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act;

- (b) fails, in addition to the information expressly required to be included in a statement or report, to add such further material information as is necessary to make the required statements, in the light of the circumstances under which they were made not misleading;
- (c) fails to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the issuer; and
- (d) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: transactions are executed in accordance with management's general or specific authorization; transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets; access to assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$25,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall make this payment within three-hundred and sixty (360) days after entry of this Final Judgment by certified

check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Kurt D. Whitesel as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited for five years following the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

X.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: _____, _____

UNITED STATES DISTRICT JUDGE

EXHIBIT 38

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

KIPP D. ORME,

Defendant.

Civil Action Number:

**FINAL JUDGMENT AS
TO DEFENDANT
KIPP D. ORME**

The Securities and Exchange Commission having filed a Complaint and Defendant Kipp D. Orme ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or

otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], by using any means or instruments of transportation or communication in interstate commerce or by using the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud, or
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 13b2-2 under the Exchange Act [17 C.F.R. § 240.13b2-2] by directly or indirectly making or causing to be made materially false or misleading statements, or omitting to state or causing other persons to omit to state material facts necessary in order to make statements made, in light of the circumstances under which such statements are made, not misleading to an accountant in connection with:

- (1) an audit or examination of the financial statements of an issuer required to be made pursuant to the Exchange Act; or (2) the preparation or filing of any document or report required to be filed with the Commission pursuant to the Exchange Act or otherwise.

IV.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Rule

13b2-1 promulgated under the Exchange Act [17 C.F.R. § 240.13b2-1] by falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13], by knowingly providing substantial assistance to an issuer that:

- (a) fails to file with the Commission any report or statement required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, or information and documents required by the Commission to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act;
- (b) fails, in addition to the information expressly required to be included in a statement or report, to add such further material information as is necessary to make the required statements, in the light of the circumstances under which they were made not misleading;

- (c) fails to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the issuer; and
- (d) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: transactions are executed in accordance with management's general or specific authorization; transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets; access to assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$100,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall make this payment within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter

identifying Kipp D. Orne as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited for five years following the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

X.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: _____, _____

UNITED STATES DISTRICT JUDGE

EXHIBIT 39
REDACTED IN ITS ENTIRETY

EXHIBIT 40

Westlaw.

4/16/2007 NLJ 3, (Col. 3)
4/16/2007 Nat'l L.J. 3, (Col. 3)

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In Brief

JUDICIAL CONFERENCE REJECTS SELECTIVE WAIVER

A FEDERAL JUDICIAL committee has given thumbs down to changes in evidence Rule 502 that would have allowed partial waivers of attorney-client privilege.

The decision came on April 13 during a meeting of the Judicial Conference Advisory Committee on Rules of Evidence in San Diego, according to Dan Capra, committee reporter and Fordham University School of Law professor.

Companies seeking breaks for cooperating with government investigations have attempted to use partial waivers of attorney-client privilege to supply results of internal investigations but limit their use to government investigators.

From ALM staff and wire services

4/16/2007 NLJ 3, (Col. 3)

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EXHIBIT 41

Final Version, Rule 502, April 13, 2007

Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver

The following provisions apply, under the circumstances set out, to disclosure of a communication or information protected by an attorney-client privilege or as work product.

(a) Scope of a waiver. — If the disclosure is made in a federal proceeding or to a federal office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in any federal or state proceeding only if

- (1) the waiver is intentional;
- (2) the disclosed and undisclosed communication or information concern the same subject matter; and
- (3) they ought in fairness to be considered together.

(b) Inadvertent disclosure. — If the disclosure is made in a federal proceeding or to a federal office or agency, the disclosure does not operate as a waiver in a federal or state proceeding if:

- (1) the disclosure is inadvertent;
- (2) the holder of the privilege or work-product protection took reasonable steps to prevent disclosure; and
- (3) the holder took reasonable and prompt steps to rectify the error, including (if applicable) following Fed. R. Civ. P. 26(b)(5)(B).

(c) Controlling effect of court orders. — A federal court may order that the privilege or work-product protection is not waived by disclosure connected with the litigation pending before the court. The order governs all persons and entities in all federal or state proceedings, whether or not they were parties to the litigation.

(d) Controlling effect of party agreements. — An agreement on the effect of disclosure is binding on the parties to the agreement, but not on other parties unless it is incorporated into a court order.

(e) Definitions. — In this rule:

- 1) “attorney-client privilege” means the protection that applicable law provides for confidential attorney-client communications; and
- 2) “work-product protection” means the protection that applicable law provides for tangible material or its intangible equivalent, prepared in anticipation of litigation or for trial.

(f) Federal or state law as the rule of decision. — Notwithstanding Rule 501, this rule applies even if state law provides the rule of decision.

(g) State proceedings. — Notwithstanding Rules 101 and 1101, this rule applies to state

proceedings, under the circumstances set out in the rule.

(h) Disclosures made in a state proceeding. — When the disclosure is made in a state proceeding, is not the subject of an order of the state court, and the disclosed communication or information is offered in a federal proceeding, the disclosure is not a waiver if it:

(1) would not be a waiver under this rule if it had been made in a federal proceeding; or

(2) is not a waiver under the law of the state where the disclosure occurred.

Committee Note

This new rule has two major purposes:

1) It resolves some longstanding disputes in the courts about the effect of certain disclosures of communications or information protected by the attorney-client privilege or the work product doctrine—specifically those disputes involving inadvertent disclosure and subject matter waiver.

2) It responds to the widespread complaint that litigation costs necessary to protect against waiver of attorney-client privilege or work product have become prohibitive due to the concern that any disclosure (however innocent or minimal) will operate as a subject matter waiver of all protected communications or information. This concern is especially troubling in cases involving electronic discovery. *See, e.g., Rowe Entertainment, Inc. v. William Morris Agency*, 205 F.R.D. 421, 425-26 (S.D.N.Y. 2002) (finding that in a case involving the production of e-mail, the cost of pre-production review for privileged and work product would cost one defendant \$120,000 and another defendant \$247,000, and that such review would take months). *See also Report to the Judicial Conference Standing Committee on Rules of Practice and Procedure by the Advisory Committee on the Federal Rules of Civil Procedure*, September 2005 at 27 (“The volume of information and the forms in which it is stored make privilege determinations more difficult and privilege review correspondingly more expensive and time-consuming yet less likely to detect all privileged information.”); *Hopson v. City of Baltimore*, 232 F.R.D. 228, 244 (D.Md. 2005) (electronic discovery may encompass “millions of documents” and to insist upon “record-by-record pre-production privilege review, on pain of subject matter waiver, would impose upon parties costs of production that bear no proportionality to what is at stake in the litigation”).

The rule seeks to provide a predictable, uniform set of standards under which parties can determine the consequences of a disclosure of a communication or information covered by the

attorney-client privilege or work product protection. Parties to litigation need to know, for example, that if they exchange privileged information pursuant to a confidentiality order, the court's order will be enforceable. Moreover, if a federal court's confidentiality order is not enforceable in a state court then the burdensome costs of privilege review and retention are unlikely to be reduced.

The Committee is well aware that a privilege rule proposed through the rulemaking process cannot bind state courts, and indeed that a rule of privilege cannot take effect through the ordinary rulemaking process. See 28 U.S.C § 2074(b). It is therefore anticipated that Congress must enact this rule directly, through its authority under the Commerce Clause. Cf. Class Action Fairness Act of 2005, 119 Stat. 4, PL 109-2 (relying on Commerce Clause power to regulate state class actions).

The rule makes no attempt to alter federal or state law on whether a communication or information is protected under the attorney-client privilege or work product immunity as an initial matter. Moreover, while establishing some exceptions to waiver, the rule does not purport to supplant applicable waiver doctrine generally.

The rule governs only certain waivers by disclosure. Other common-law waiver doctrines may result in a finding of waiver even where there is no disclosure of privileged information or work product. See, e.g., *Nguyen v. Excel Corp.*, 197 F.3d 200 (5th Cir. 1999) (reliance on an advice of counsel defense waives the privilege with respect to attorney-client communications pertinent to that defense); *Ryers v. Burleson*, 100 F.R.D. 436 (D.D.C. 1983) (allegation of lawyer malpractice constituted a waiver of confidential communications under the circumstances). The rule is not intended to displace or modify federal common law concerning waiver of privilege or work product where no disclosure has been made.

Subdivision (a). The rule provides that a voluntary disclosure in a federal proceeding or to a federal office or agency, if a waiver, generally results in a waiver only of the communication or information disclosed; a subject matter waiver (of either privilege or work product) is reserved for those unusual situations in which fairness requires a further disclosure of related, protected information, in order to protect against a selective and misleading presentation of evidence to the disadvantage of the adversary. See, e.g., *In re von Bulow*, 828 F.2d 94 (2d Cir. 1987) (disclosure of privileged information in a book did not result in unfairness to the adversary in a litigation, therefore a subject matter waiver was not warranted); *In re United Mine Workers of America Employee Benefit Plans Litig.*, 159 F.R.D. 307, 312 (D.D.C. 1994) (waiver of work product limited to materials actually disclosed, because the party did not deliberately disclose documents in an attempt to gain a tactical advantage). Thus, subject matter waiver is limited to situations in which a party intentionally puts protected information into the litigation in a selective, misleading and unfair manner. It follows that an inadvertent disclosure of protected information can never result in a subject matter waiver. See Rule 502(b). The rule rejects the result in *In re Sealed*

Case, 877 F.2d 976 (D.C.Cir. 1989), which held that inadvertent disclosure of documents during discovery automatically constituted a subject matter waiver.

The language concerning subject matter waiver—“ought in fairness”—is taken from Rule 106, because the animating principle is the same. A party that makes a selective, misleading presentation that is unfair to the adversary opens itself to a more complete and accurate presentation. *See, e.g., United States v. Branch*, 91 F.3d 699 (5th Cir. 1996) (under Rule 106, completing evidence was not admissible where the party’s presentation, while selective, was not misleading or unfair).

To assure protection and predictability, the rule provides that if a disclosure is made at the federal level, the federal rule on subject matter waiver governs subsequent state court determinations on the scope of the waiver by that disclosure.

Subdivision (b). Courts are in conflict over whether an inadvertent disclosure of a communication or information protected as privileged or work product constitutes a waiver. A few courts find that a disclosure must be intentional to be a waiver. Most courts find a waiver only if the disclosing party acted carelessly in disclosing the communication or information and failed to request its return in a timely manner. And a few courts hold that any inadvertent disclosure of a communication or information protected under the attorney-client privilege or as work product constitutes a waiver without regard to the protections taken to avoid such a disclosure. *See generally Hopson v. City of Baltimore*, 232 F.R.D. 228 (D.Md. 2005) for a discussion of this case law.

The rule opts for the middle ground: inadvertent disclosure of protected communications or information in connection with a federal proceeding or to a federal office or agency does not constitute a waiver if the holder took reasonable steps to prevent disclosure and also took reasonable and prompt steps to rectify the error. This position is in accord with the majority view on whether inadvertent disclosure is a waiver. *See, e.g., Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576-77 (D. Kan. 1997) (work product); *Hydraflow, Inc. v. Enidine, Inc.*, 145 F.R.D. 626, 637 (W.D.N.Y. 1993) (attorney-client privilege); *Edwards v. Whitaker*, 868 F.Supp. 226, 229 (M.D. Tenn. 1994) (attorney-client privilege). The rule establishes a compromise between two competing premises. On the one hand, a communication or information covered by the attorney-client privilege or work product protection should not be treated lightly. On the other hand, a rule imposing strict liability for an inadvertent disclosure threatens to impose prohibitive costs for privilege review and retention, especially in cases involving electronic discovery.

The rule applies to inadvertent disclosures made to a federal office or agency, including but not limited to an agency that is acting in the course of its regulatory, investigative or enforcement

134 authority. The consequences of waiver, and the concomitant costs of pre-production privilege
135 review, can be as great with respect to such disclosures as they are in litigation.

136 Cases such as *Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Co.*, 104 F.R.D. 103,
137 105 (S.D.N.Y. 1985) and *Hartford Fire Ins. Co. v. Garvey*, 109 F.R.D. 323, 332 (N.D.Cal.
138 1985), set out a multi-factor test for determining whether inadvertent disclosure is a waiver– the
139 reasonableness of precautions taken, the time taken to rectify the error, the scope of discovery, the
140 extent of disclosure and the overriding issue of fairness. The rule does not explicitly codify that test,
141 because it is really a set of non-determinative guidelines that vary from case to case. The rule is
142 flexible enough to accommodate any of those factors. Other relevant considerations include the
143 number of documents to be reviewed and the time constraints for production. Depending on the
144 circumstances, a holder that uses advanced analytical software applications and linguistic tools may
145 be found to have taken “reasonable steps” to prevent disclosure of protected communications or
146 information. Efficient systems of records management implemented before litigation will also be
147 relevant.

148 The rule does not require the producing party to engage in a post-production review to
149 determine whether any protected communication or information has been produced by mistake.
150 But the rule does require the producing party to follow up on any obvious indications that a
151 protected communication or information has been produced inadvertently.

152
153 The rule is intended to apply in all federal court proceedings, including court-annexed and
154 court-ordered arbitrations.

155 The rule refers to “inadvertent” disclosure, as opposed to using any other term, because
156 the word “inadvertent” is widely used by courts and commentators to cover mistaken or
157 unintentional disclosures of communications or information covered by the attorney-client privilege
158 or the work product protection. See, e.g., *Manual for Complex Litigation Fourth* § 11.44
159 (Federal Judicial Center 2004) (referring to the “consequences of inadvertent waiver”); *Alldread*
160 *v. City of Grenada*, 988 F.2d 1425, 1434 (5th Cir. 1993) (“There is no consensus, however, as
161 to the effect of inadvertent disclosure of confidential communications.”).

162 **Subdivision (c).** Confidentiality orders are becoming increasingly important in limiting the
163 costs of privilege review and retention, especially in cases involving electronic discovery. See
164 *Manual for Complex Litigation Fourth* § 11.446 (Federal Judicial Center 2004) (noting that fear
165 of the consequences of waiver “may add cost and delay to the discovery process for all sides” and
166 that courts have responded by encouraging counsel “to stipulate at the outset of discovery to a
167 ‘nonwaiver’ agreement, which they can adopt as a case-management order.”). But the utility of
168 a confidentiality order in reducing discovery costs is substantially diminished if it provides no
169 protection outside the particular litigation in which the order is entered. Parties are unlikely to be
170 able to reduce the costs of pre-production review for privilege and work product if the

consequence of disclosure is that the communications or information could be used by non-parties to the litigation.

There is some dispute on whether a confidentiality order entered in one case can bind non-parties from asserting waiver by disclosure in a separate litigation. *See generally Hopson v. City of Baltimore*, 232 F.R.D. 228 (D.Md. 2005) for a discussion of this case law. The rule provides that when a confidentiality order governing the consequences of disclosure in that case is entered in a federal proceeding, its terms are enforceable against non-parties in any federal or state proceeding. For example, the court order may provide for return of documents without waiver irrespective of the care taken by the disclosing party; the rule contemplates enforcement of "claw-back" and "quick peek" arrangements as a way to avoid the excessive costs of pre-production review for privilege and work product. As such, the rule provides a party with a predictable protection that is necessary to allow that party to limit the prohibitive costs of privilege and work product review and retention.

Under the rule, a confidentiality order is enforceable whether or not it memorializes an agreement among the parties to the litigation. Party agreement should not be a condition of enforceability of a federal court's order.

Subdivision (d). Subdivision(d) codifies the well-established proposition that parties can enter an agreement to limit the effect of waiver by disclosure between or among them. *See, e.g., Dowd v. Calabrese*, 101 F.R.D. 427, 439 (D.D.C. 1984) (no waiver where the parties stipulated in advance that certain testimony at a deposition "would not be deemed to constitute a waiver of the attorney-client or work product privileges"); *Zubulake v. UBS Warburg LLC*, 216 F.R.D. 280, 290 (S.D.N.Y. 2003) (noting that parties may enter into "so-called 'claw-back' agreements that allow the parties to forego privilege review altogether in favor of an agreement to return inadvertently produced privilege documents"). Of course such an agreement can bind only the parties to the agreement. The rule makes clear that if parties want protection in a separate litigation from a finding of waiver by disclosure, the agreement must be made part of a court order.

Subdivision (e). The rule's coverage is limited to attorney-client privilege and work product. The operation of waiver by disclosure, as applied to other evidentiary privileges, remains a question of federal common law. Nor does the rule purport to apply to the Fifth Amendment privilege against compelled self-incrimination.

The definition of work product "materials" is intended to include both tangible and intangible information. *See In re Cendant Corp. Sec. Litig.*, 343 F.3d 658, 662 (3d Cir. 2003) ("It is clear from *Hickman* that work product protection extends to both tangible and intangible work product").

206 **Subdivision (f).** The costs of discovery can be equally high for state and federal causes
207 of action, and the rule seeks to limit those costs in all federal proceedings, regardless of whether
208 the claim arises under state or federal law. Accordingly, the rule applies to state causes of action
209 brought in federal court.

210 **Subdivision (g).** The protections against waiver provided by Rule 502 must be applicable
211 when disclosures of protected communications or information in federal proceedings are
212 subsequently offered in state proceedings. Otherwise the holders of protected communications and
213 information, and their lawyers, could not rely on the protections provided by the Rule, and the goal
214 of limiting costs in discovery would be substantially undermined. Rule 502(g) is intended to resolve
215 any potential tension between the provisions of Rule 502 that apply to state proceedings and the
216 possible limitations on the applicability of the Federal Rules of Evidence otherwise provided by
217 Rules 101 and 1101.

218 **Subdivision (h).** Difficult questions can arise when 1) a disclosure of a communication or
219 information protected by the attorney-client privilege or as work product is made in a state
220 proceeding, 2) the communication or information is offered in a subsequent federal proceeding on
221 the ground that the disclosure waived the privilege or protection, and 3) the state and federal laws
222 are in conflict on the question of waiver. The Committee determined that the proper solution for
223 the federal court is to apply the law that is most protective of privilege and work product. Where
224 the state law is more protective (such as where the state law is that an inadvertent disclosure can
225 never be a waiver), the holder of the privilege or protection may well have relied on that law when
226 making the disclosure in the state proceeding. Moreover, applying a more restrictive federal law
227 of waiver could impair the state objective of preserving the privilege or work-product protection
228 for disclosures made in state proceedings. On the other hand, where the federal law is more
229 protective, applying the state law of waiver to determine admissibility in federal court is likely to
230 undermine the federal objective of limiting the costs of discovery.

231 The rule does not address the enforceability of a state court confidentiality order in a
232 federal proceeding, as that question is covered both by statutory law and principles of federalism
233 and comity. *See* 28 U.S.C. § 1738 (providing that state judicial proceedings “shall have the same
234 full faith and credit in every court within the United States . . . as they have by law or usage in the
235 courts of such State . . . from which they are taken.”). *See also* 6 MOORE’S FEDERAL PRACTICE
236 § 26.106[1] n.5.2 (3d ed. 2006), citing *Tucker v. Ohtsu Tire & Rubber Co.*, 191 F.R.D. 495,
237 499 (D.Md. 2000) (noting that a federal court considering the enforceability of a state
238 confidentiality order is “constrained by principles of comity, courtesy, and . . . federalism”). Thus,
239 a state court order finding no waiver in connection with a disclosure made in a state court
240 proceeding is enforceable under existing law in subsequent federal proceedings.

EXHIBIT 42

Statutory language on selective waiver, 4/13/2007

(a) **Selective waiver.** — In a federal [or state] proceeding, the disclosure of a communication or information protected by the attorney-client privilege or as work product — when made for any purpose to a federal office or agency in the course of any regulatory, investigative, or enforcement process — does not waive the privilege or work-product protection in favor of any person or entity other than a [the] federal office or agency.

(b) **Rule of construction.** — This rule does not:

- 1) limit or expand a government office or agency's authority to disclose communications or information to other government offices or agencies or as otherwise authorized or required by law; or
- 2) limit any protection against waiver provided in any other Act of Congress.

(c) **Definitions.** — In this Act:

- 1) "attorney-client privilege" means the protection that applicable law provides for confidential attorney-client communications; and
- 2) "work-product protection" means the protection that applicable law provides for tangible material or its tangible equivalent, prepared in anticipation of litigation or for trial.

Committee Note on Selective Waiver

Courts are in conflict over whether disclosure of privileged or protected communications or information to a government office or agency conducting an investigation of the client constitutes a general waiver of the communications or information disclosed. Most courts have rejected the concept of "selective waiver," holding that waiver of privileged or protected communications or information to a government office or agency constitutes a waiver for all purposes and to all parties. *See, e.g., Westinghouse Electric Corp. v. Republic of the Philippines*, 951 F.2d 1414 (3d Cir. 1991). Other courts have held that selective waiver is enforceable if the disclosure is made subject to a confidentiality agreement with the government office or agency. *See, e.g., Teachers Insurance & Annuity Association of America v. Shamrock Broadcasting Co.*, 521 F. Supp. 638 (S.D.N.Y. 1981). And a few courts have held that disclosure of privileged or protected communications or information to the government does not constitute a general waiver, so that the privilege or protection remains applicable against other parties. *See, e.g., Diversified Industries, Inc. v. Meredith*, 572 F.2d 596 (8th Cir. 1977).

The rule resolves this conflict by providing that disclosure of protected communications or information to a federal office or agency exercising regulatory, investigative or enforcement authority does not constitute a waiver of attorney-client privilege or work product protection as to any person or entity other than a [the] federal public office or agency; that protection of selective waiver applies when the disclosed communication or information is subsequently offered in [either] federal [or state court].

The rule does not purport to affect the disclosure of protected communications or information after receipt by the federal office or agency. The rule does, however, provide protection from waiver in favor of anyone other than federal offices or agencies, regardless of the extent of disclosure of the communications or information by any such office or agency. Even if the communications or information are used in an enforcement proceeding and so become publicly available, the communications or information will continue to be protected as against other persons or entities.

The rule provides that when protected communications or information are disclosed to a "federal office or agency" the disclosure does not operate as a waiver to any person or entity other than a [the] federal office or agency. As such, a disclosure covered by the rule does not operate as a waiver in any congressional investigation or hearing.

The rule is not intended to limit or affect any other Act of Congress that provides for selective waiver protection for disclosures made to government agencies or offices. *See, e.g.*, Financial Services Regulatory Relief Act of 2006, Pub.L.No. 109-351, § 607, 120 Stat. 1966, 1981 (2006).

EXHIBIT 43

DOCUMENTS SUBJECT TO NORTHWESTERN RETURN DEMANDS

ITEM	BATES RANGE	DATE PRODUCED	DATE RETURN DEMANDED	PRIVILEGE LOG NUMBER	DATE LOGGED	ADMITTEDLY DISCLOSED TO SEC	OTHERWISE NON-PRIVILEGED ON FACE OF LOG?
A	NOR053296 - NOR053297	1/4/2007	4/5/2007	436	3/23/2007	Yes	Yes
B	NOR066670 - NOR066671	1/19/2007	4/5/2007	26	3/23/2007	Yes	
C	NOR075185 - NOR075186	1/19/2007	4/5/2007	26	3/23/2007	Yes	
D	NOR086411 - NOR086412	1/19/2007	4/5/2007	26	3/23/2007	Yes	
E	NOR086481 - NOR086559	1/19/2007	4/5/2007	31, 27	3/23/2007	Yes	
F	NOR131455	1/25/2007	4/5/2007	184	3/23/2007	Yes	
G	NOR135865 - NOR135867	1/25/2007	4/5/2007	1381	3/23/2007	Yes	
H	NOR142061	1/25/2007	4/5/2007	422	3/23/2007	Yes	
I	NOR149263 - NOR149264	1/25/2007	4/5/2007	1381	3/23/2007	Yes	
J	NOR173136 - NOR173138	1/25/2007	4/5/2007	1381	3/23/2007	Yes	
K	NOR184691 - NOR184694	1/25/2007	4/5/2007	64	3/23/2007	Yes	
L	NOR184858 - NOR184859	1/25/2007	4/5/2007	414	3/23/2007	Yes	
M	NOR185818 - NOR185820	1/25/2007	4/5/2007	563	3/23/2007	Yes	
N	NOR187057 - NOR187058	1/25/2007	4/5/2007	191	3/23/2007	Yes	
O	NOR192884 - NOR192983	1/25/2007	4/5/2007	115	3/23/2007	Yes	
P	NOR193851 - NOR193853	1/25/2007	4/5/2007	1381	3/23/2007	Yes	
Q	NOR240045 - NOR240046	2/1/2007	4/5/2007	1	3/23/2007	Yes	
R	NOR265143	2/9/2007	4/5/2007	174	3/23/2007	Yes	
S	NOR275785	2/9/2007	4/5/2007	174	3/23/2007	Yes	
T	NOR374782 - NOR374792	3/6/2007	4/5/2007	1490	3/23/2007	Yes	
U	NOR411358 - NOR411450	3/6/2007	4/5/2007	32	3/23/2007	Yes	
V	NOR441828 - NOR441832	3/14/2007	4/5/2007	966,967	3/23/2007	Yes	
W	NOR452812	3/14/2007	4/5/2007	119	3/23/2007	Yes	
X	NOR458213 - NOR458215	3/14/2007	4/5/2007	1381	3/23/2007	Yes	
Y	NOR458221 - NOR458226	3/14/2007	4/5/2007	120	3/23/2007	Yes	
Z	NOR459119 - NOR459120	3/14/2007	4/5/2007	1455	3/23/2007	Yes	
AA	NOR481063 - NOR481064	3/23/2007	4/5/2007	493	3/23/2007	Yes	
BB	NOR481073	3/23/2007	4/5/2007	495	3/23/2007	Yes	
CC	NOR481065 - NOR481066	3/23/2007	4/5/2007	?	?	?	
DD	NOR482791 - NOR482793	3/23/2007	4/5/2007	484	3/23/2007	Yes	
EE	NOR465654	3/23/2007	4/5/2007	1747	4/24/2007	Yes	
FF	NOR160675 - NOR160676	1/25/2007	4/5/2007	169, 1732	3/23/2007 + 04/5/2007	Yes, Yes	
GG	NOR371624 - NOR372806	3/6/2007	4/5/2007	1467, 1669	3/23/2007 + 4/5/2007	Yes, Yes	
HH	NOR47829 - NOR375523	3/6/2007	4/5/2007	1467, 1669	3/23/2007 + 4/5/2007	Yes, Yes	
II	NOR413446 - NOR413500	3/6/2007	4/5/2007	1467, 1669	3/23/2007 + 4/5/2007	Yes, Yes	
JJ	NOR414057 - NOR414114	3/6/2007	4/5/2007	1467, 1669	3/23/2007 + 4/5/2007	Yes, Yes	
KK	NOR088303 - NOR088305	1/19/2007	4/5/2007	?	?	?	
LL	NOR121152 - NOR121173	1/19/2007	4/5/2007	?	?	?	
MM	NOR452810 - NOR452811	3/14/2007	4/5/2007	?	?	?	
NN	NOR452820	3/14/2007	4/5/2007	?	?	?	
OO	NOR065216 - NOR065217	1/19/2007	4/5/2007	1729	4/5/2007	Yes	
PP	NOR067845 - NOR067886	1/19/2007	4/5/2007	1729	4/5/2007	Yes	
QQ	NOR072813 - NOR072814	1/19/2007	4/5/2007	1729	4/5/2007	Yes	
RR	NOR072815 - NOR072816	1/19/2007	4/5/2007	1729	4/5/2007	Yes	
SS	NOR073773 - NOR073774	1/19/2007	4/5/2007	1729	4/5/2007	Yes	
TT	NOR076260 - NOR076261	1/19/2007	4/5/2007	1729	4/5/2007	Yes	
UU	NOR077858 - NOR077859	1/19/2007	4/5/2007	1729	4/5/2007	Yes	
VV	NOR081375 - NOR081376	1/19/2007	4/5/2007	1729	4/5/2007	Yes	
WW	NOR087633 - NOR087634	1/19/2007	4/5/2007	1730	4/5/2007	Yes	
XX	NOR088910 - NOR088911	1/19/2007	4/5/2007	1729	4/5/2007	Yes	
YY	NOR092308 - NOR092309	1/19/2007	4/5/2007	1731	4/5/2007	Yes	
ZZ	NOR117952 - NOR117953	1/19/2007	4/5/2007	1729	4/5/2007	Yes	
AAA	NOR119158 - NOR119159	1/19/2007	4/5/2007	1729	4/5/2007	Yes	
BBB	NOR124686 - NOR124687	1/19/2007	4/5/2007	1729	4/5/2007	Yes	
CCC	NOR160675 - NOR160676	1/25/2007	4/5/2007	?	?	?	
DDD	NOR366792 - NOR366809	3/6/2007	4/5/2007	1733	4/5/2007	Yes	

ITEM	BATES RANGE	DATE PRODUCED	DATE RETURN DEMANDED	PRIVILEGE LOG NUMBER	DATE LOGGED	ADMITTEDLY DISCLOSED TO SEC	OTHERWISE NON-PRIVILEGED ON FACE OF LOG?
EEE	NOR367014 - NOR367041	3/5/2007	4/5/2007	1734	4/5/2007	Yes	
FFF	NOR367140 - NOR367151	3/5/2007	4/5/2007	1735	4/5/2007	Yes	
GGG	NOR368029 - NOR368037	3/5/2007	4/5/2007	1737	4/5/2007	Yes	
HHH	NOR368234 - NOR368261	3/5/2007	4/5/2007	1738	4/5/2007	Yes	
III	NOR368363 - NOR368370	3/5/2007	4/5/2007	1739	4/5/2007	Yes	
JJJ	NOR405402 - NOR405403	3/5/2007	4/5/2007	1738	4/5/2007	Yes	
KKK	NOR405928 - NOR405930	3/5/2007	4/5/2007	1740	4/5/2007	Yes	
LLL	NOR406074 - NOR406075	3/5/2007	4/5/2007	1741	4/5/2007	Yes	
MMM	NOR406175 - NOR406180	3/5/2007	4/5/2007	1742	4/5/2007	Yes	
NNN	NOR406416 - NOR406455	3/5/2007	4/5/2007	1743	4/5/2007	Yes	
OOO	NOR458032 - NOR458035	3/14/2007	4/5/2007	1744	4/5/2007	Yes	
PPP	NOR469466	3/23/2007	4/5/2007	1745	4/5/2007	Yes	
QQQ	NOR479145 - NOR479146	3/23/2007	4/5/2007	1746	4/5/2007	Yes	
RRR	NOR481065 - NOR481066	3/23/2007	4/5/2007	1747	4/5/2007	Yes	
SSS	NOR374460 - NOR374530	3/5/2007	4/12/2007	1471	3/23/2007	?	
TTT	NOR067847 - NOR067849	1/19/2007	4/12/2007	1748	4/24/2007	?	
UUU	NOR086481 - NOR086559	1/19/2007	4/12/2007	?	?	?	
VVV	NOR367071 - NOR367073	3/5/2007	4/12/2007	1749, 1750	4/24/2007	?	
WWW	NOR367124 - NOR367130	3/5/2007	4/12/2007	1751	4/24/2007	?	
XXX	NOR368038 - NOR368101	3/5/2007	4/12/2007	1752	4/24/2007	?	
YYY	NOR440103 - NOR440107	3/5/2007	4/12/2007	1754	4/24/2007	?	
ZZZ	NOR317953 - NOR317970	2/26/2007	4/12/2007	1628, 1629	4/24/2007	Yes, Yes	
AAA	NOR317980 - NOR317984	2/26/2007	4/12/2007	1754	4/24/2007	?	
BBB	NOR352700 - NOR352711	3/5/2007	4/12/2007	1753	4/24/2007	?	
CCC	NOR352712 - NOR352713	3/5/2007	4/12/2007	1754	4/24/2007	?	
DDD	NOR352714 - NOR352722	3/5/2007	4/12/2007	1755	4/24/2007	?	
EEE	NOR365676 - NOR365677	3/5/2007	4/12/2007	1756	4/24/2007	?	
FFF	NOR367925 - NOR367929	3/5/2007	4/12/2007	1757	4/24/2007	?	
GGG	NOR405298 - NOR405308	3/5/2007	4/12/2007	1758	4/24/2007	?	
HHH	NOR405532 - NOR405536	3/5/2007	4/12/2007	1759	4/24/2007	?	
III	NOR405683 - NOR405684	3/5/2007	4/12/2007	1760	4/24/2007	?	
JJJ	NOR405703	3/5/2007	4/12/2007	1761	4/24/2007	?	
KKK	NOR405713 - NOR405718	3/5/2007	4/12/2007	1762	4/24/2007	?	
LLL	NOR405789 - NOR405791	3/5/2007	4/12/2007	1763	4/24/2007	?	
MMM	NOR405850 - NOR405851	3/5/2007	4/12/2007	1764	4/24/2007	?	
NNN	NOR405857 - NOR405859	3/5/2007	4/12/2007	1765	4/24/2007	?	
OOO	NOR405920 - NOR405923	3/5/2007	4/12/2007	1766	4/24/2007	?	
PPP	NOR406065 - NOR406066	3/5/2007	4/12/2007	1767	4/24/2007	?	
QQQ	NOR406097 - NOR406099	3/5/2007	4/12/2007	1768	4/24/2007	?	
RRR	NOR406103 - NOR406104	3/5/2007	4/12/2007	1769	4/24/2007	?	
SSS	NOR406165 - NOR406169	3/5/2007	4/12/2007	1770	4/24/2007	?	
TTT	NOR406170 - NOR406174	3/5/2007	4/12/2007	1771	4/24/2007	?	
UUU	NOR406759 - NOR406797	3/5/2007	4/12/2007	1773	4/24/2007	?	

EXHIBIT 44
REDACTED IN ITS ENTIRETY

EXHIBIT 45
REDACTED IN ITS ENTIRETY

EXHIBIT 46

v = disclosed to SEC per 4/9 letter

Initial List of Apparently Non-Privileged Documents by Document No.

Doc No. 2 ✓	Doc No. 218 ✓	Doc No. 352 ✓	Doc No. 489 ✓
Doc No. 16 ✓	Doc No. 219 ✓	Doc No. 361	Doc No. 531 ✓
Doc No. 29	Doc No. 221 ✓	Doc No. 364 ✓	Doc No. 532 ✓
Doc No. 41	Doc No. 223	Doc No. 367 ✓	Doc No. 533 ✓
Doc No. 55	Doc No. 224	Doc No. 368 ✓	Doc No. 536 ✓
Doc No. 56	Doc No. 229	Doc No. 369 ✓	Doc No. 540 ✓
Doc No. 61	Doc No. 231 ✓	Doc No. 370 ✓	Doc No. 541 ✓
Doc No. 69	Doc No. 233	Doc No. 373 ✓	Doc No. 543 ✓
Doc No. 87	Doc No. 238	Doc No. 389 ✓	Doc No. 547 ✓
Doc No. 91 ✓	Doc No. 239	Doc No. 391	Doc No. 562
Doc No. 92	Doc No. 240	Doc No. 392 ✓	Doc No. 563 ✓
Doc No. 94	Doc No. 241	Doc No. 395 ✓	Doc No. 564 ✓
Doc No. 100 ✓	Doc No. 243 ✓	Doc No. 402 ✓	Doc No. 565 ✓
Doc No. 103	Doc No. 246	Doc No. 404	Doc No. 567
Doc No. 107	Doc No. 247	Doc No. 411 ✓	Doc No. 568
Doc No. 111	Doc No. 248	Doc No. 412 ✓	Doc No. 569
Doc No. 112	Doc No. 255	Doc No. 417 ✓	Doc No. 572
Doc No. 114	Doc No. 261	Doc No. 420 ✓	Doc No. 577
Doc No. 139	Doc No. 262	Doc No. 422 ✓	Doc No. 579 ✓
Doc No. 140	Doc No. 263	Doc No. 424 ✓	Doc No. 582
Doc No. 141	Doc No. 264	Doc No. 425	Doc No. 583
Doc No. 166 ✓	Doc No. 265	Doc No. 426 ✓	Doc No. 584
Doc No. 177 ✓	Doc No. 266	Doc No. 427	Doc No. 586
Doc No. 181 ✓	Doc No. 267	Doc No. 428	Doc No. 592
Doc No. 182	Doc No. 268	Doc No. 429	Doc No. 594
Doc No. 183 ✓	Doc No. 269	Doc No. 433	Doc No. 596 ✓
Doc No. 184 ✓	Doc No. 270	Doc No. 434 ✓	Doc No. 597
Doc No. 187 ✓	Doc No. 271	Doc No. 436 ✓	Doc No. 598
Doc No. 188 ✓	Doc No. 274	Doc No. 445	
Doc No. 191 ✓	Doc No. 275 ✓	Doc No. 446	
Doc No. 193 ✓	Doc No. 276	Doc No. 447	
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Doc No. 195 ✓	Doc No. 278	Doc No. 449	
Doc No. 196 ✓	Doc No. 280	Doc No. 450	
Doc No. 197 ✓	Doc No. 281	Doc No. 455 ✓	
Doc No. 199	Doc No. 282	Doc No. 456	
Doc No. 204 ✓	Doc No. 338	Doc No. 457 ✓	
Doc No. 207	Doc No. 341	Doc No. 460	
Doc No. 208	Doc No. 344 ✓	Doc No. 465 ✓	
Doc No. 209 ✓	Doc No. 348 ✓	Doc No. 466 ✓	
Doc No. 213	Doc No. 349	Doc No. 467 ✓	
Doc No. 216	Doc No. 350 ✓	Doc No. 472	
Doc No. 217	Doc No. 351 ✓	Doc No. 484	

✓ = disclosed to SEC per 4/9 letter

Second List of Apparently Non-Privileged Documents by Document No.

Doc No. 611	Doc No. 810	Doc No. 1335
Doc No. 612	Doc No. 865	Doc No. 1336
Doc No. 613	Doc No. 1051	Doc No. 1337
Doc No. 616	Doc No. 1052	Doc No. 1338
Doc No. 617	Doc No. 1154	Doc No. 1378
Doc No. 618	Doc No. 1155	Doc No. 1379
Doc No. 620 ✓	Doc No. 1156	Doc No. 1404
Doc No. 622	Doc No. 1157	Doc No. 1410
Doc No. 631	Doc No. 1158	Doc No. 1411
Doc No. 638	Doc No. 1159	Doc No. 1412
Doc No. 641	Doc No. 1182	Doc No. 1413
Doc No. 664	Doc No. 1199	Doc No. 1414
Doc No. 671	Doc No. 1214	Doc No. 1419
Doc No. 679	Doc No. 1232	Doc No. 1444
Doc No. 687	Doc No. 1233	Doc No. 1462
Doc No. 702	Doc No. 1237	Doc No. 1463
Doc No. 704	Doc No. 1242	Doc No. 1521
Doc No. 708	Doc No. 1254	
Doc No. 709	Doc No. 1255	
Doc No. 710	Doc No. 1256	
Doc No. 712	Doc No. 1257	
Doc No. 713	Doc No. 1260	
Doc No. 721	Doc No. 1261	
Doc No. 724	Doc No. 1262	
Doc No. 725 ✓	Doc No. 1263	
Doc No. 726	Doc No. 1264	
Doc No. 727	Doc No. 1265	
Doc No. 730	Doc No. 1266	
Doc No. 734	Doc No. 1267	
Doc No. 735	Doc No. 1268	
Doc No. 736	Doc No. 1269	
Doc No. 737	Doc No. 1270	
Doc No. 738	Doc No. 1271	
Doc No. 740	Doc No. 1272	
Doc No. 746	Doc No. 1273	
Doc No. 753	Doc No. 1280	
Doc No. 771	Doc No. 1281	
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Doc No. 789	Doc No. 1331	
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Doc No. 798	Doc No. 1333	
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